In the High Court of Judicature at Madras

Dated : 17.1.2006

Coram:

The Honourable Mr.Justice R.SUDHAKAR

W.P.No.15989 of 1996

S.Jeyasheela .. Petitioner

vs.

1. The Joint Registrar of
   Co-operative Societies,
   Nagercoil,
   Kanyakumari District.

2. Thalakulam Eraniel Farmers
   Service Co-operative Society Ltd.,
   Monday Market,
   Neyyoor Post, Kanyakumari District,
   Rep. by its Special Officer.

3. S.Sam Sundar .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari, calling for the records relating to the proceedings of the second respondent dated 31.12.1993 and the proceedings of the first respondent in Na.Ka.No.4335/94, dated 22.5.1996, and quash the same.

For Petitioner : Mr.Edwing for
M/s.P.T.Perumal

For R1 : Mr.Sanjay Ramaswamy
Govt. Advocate

For R2 : Mr.A.R.Nixon

For R3 : No appearance

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O R D E R

The writ petition has been filed challenging the proceedings of the second respondent dated 31.12.1993 and the proceedings of the first respondent in Na.Ka.No.4335/94, dated 22.05.1996.

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2. The case of the petitioner is that she was employed as Accountant in the second respondent society, three charge memos, were served on her. Criminal proceedings were also initiated. The second respondent-Society appointed Mr.Sam Sundar, Advocate as the Enquiry Officer in the departmental proceedings.

3. Petitioner filed Civil Suit in O.S.No.396 of 1993 on the file of the District Munsif Court, Padmanabhapuram, questioning the suspension order dated 12.04.1993 passed against the writ petitioner. The third respondent Mr.Sam Sunder, Advocate filed a vakalat on behalf of the second respondent-Society and contested the case on merits. Therefore, the petitioner objected to the appointment of the Third respondent as Enquiry Officer, however, the enquiry proceeded further and the third respondent framed charges against the writ petitioner and conducted the enquiry. According to the writ petitioner, the Enquiry Officer/third respondent, who was the counsel for the second respondent was biased and hostile towards the petitioner. The petitioner did not participate in the proceedings and the enquiry was conducted ex-parte. The report of the enquiry was submitted to the second respondent by report dated 6.9.1993 and the petitioner was found guilty of all the charges. On the basis of the enquiry report a show cause notice was issued calling for explanation as to why petitioner should not be dismissed from service. This notice was received 0n 25.10.1993. By letter dated 28.10.93 petitioner requested for 30 days time to reply. By another letter dated 28.10.93 the petitioner complained that no proper opportunity was given in spite of pleading for time on health grounds and further objected to the appointment of third respondent as enquiry officer and wanted to cross examine the witnesses who have deposed against the petitioner and stated that the reply will be submitted thereafter. The second respondent rejected the request on the ground that the intention of the petitioner is to delay the disciplinary enquiry. Therefore, the petitioner was dismissed from service by the impugned order of the Special Officer dated 31.12.1993. As against the order of the Special Officer dated 31.12.1993, the writ petitioner filed a revision before the first respondent on 15.03.1994.

4. The contention of the petitioner in the revision was that the third respondent herein is the counsel for the second respondent in the civil suit filed by the petitioner and the third respondent having been appointed as the Enquiry Officer, the proceedings were violative of principles of Natural Justice and biased and has caused prejudice to her. That the third respondent is hostile and biased against the petitioner. The revision was disposed of on 22.05.1996. The counsel for the petitioner would submit that the revision petition was dismissed, without considering the various contentions raised before the authority, and the order of the first respondent confirming the dismissal order of the second respondent dated

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31.12.1993 is bad and contrary to principles of Natural Justice and inherently defective.

5. A counter has been filed by the first respondent. The contention on behalf of the first respondent is that the writ petitioner who was working in the Society was suspended on 12.4.1993, on account of involvement in the large scale misappropriation. The charges were framed, against her on different dates and the same were served on her. No explanation was submitted by the petitioner. The petitioner wanted certain documents which were given. Further, she did not submit her explanation, but filed O.S.No.396 of 1993 on the file of the District Munsif Court, challenging the suspension, which was dismissed. The Special Officer instituted Domestic Enquiry, but petitioner left the enquiry in the middle and thereafter did not attend the enquiry at all and the Domestic enquiry officer filed a report. Based on the report, a second show cause notice was issued with regard to punishment, for which, no reply was submitted by the petitioner. On the basis of the findings, the writ petitioner was dismissed from service with effect from 31.12.1993. The revision petition filed by the petitioner under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 was also dismissed on merits. The first respondent's contention is that there is no legal bar in taking up the domestic enquiry by the legal advisor, that the third respondent did not frame the charges and it was the second respondent who had framed the charges and it was also the second respondent who issued the second show cause notice to the writ petitioner, that the writ petitioner did not submit any explanation and therefore, based on the report of the Enquiry Officer, and the materials on record, the writ petitioner was dismissed from service on 31.12.1993. The first respondent has also made an elaborate enquiry into the matter, and confirmed the order of the dismissal. The charges framed against the petitioner are very serious in nature and the writ petitioner colluded with the other staff of the Society and misappropriated huge amounts and therefore, sought for dismissal of the writ petition.

6. Learned counsel for the petitioner would submit that his only contention in this writ petition is that appointment of the third respondent-Advocate as the Enquiry Officer has seriously prejudiced petitioners case as the third respondent is biased having appeared against the petitioner in the civil suit filed, defending the order of suspension on behalf of the second respondent. In this connection, the learned counsel for the petitioner invited the attention of this Court to the Memorandum of Revision Petition filed before the first respondent and referred to letter dated 28.10.1993 which is at paragraph 7 of the said Memorandum of Revision Petition and also to ground 10(a) of the grounds of revision. That the second respondent who passed the order of punishment dismissing the petitioner from service was a witness in the enquiry proceedings. It is also contended by the counsel for the petitioner that a

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serious punishment by way of dismissal from service has been imposed on the petitioner and no proper opportunity to explaining her case was granted. The first respondent/revisional authority merely recorded all the contentions made by the petitioner and respondent. In paragraph 2 of the order dated 22.5.1996, the first respondent, after extracting the contentions of the petitioner and submissions filed by the Society in detail, dismissed the revision petition without any reasoning or discussion on the objections made. There is total non application of mind. The order of the dismissal is cryptic and therefore has to be set aside.

7. On a perusal of the order of the first respondent, it is apparent that the relevant objections raised by the petitioner have not been considered, except stating that the charges framed against the writ petitioner are very serious. The first respondent rejected the plea of the petitioner that the action taken against her is bad, that the petitioner should be reinstated. The first respondent confirmed the order of dismissal. The first respondent has not considered the plea of prejudice and the allegation of bias against the Enquiry Officer at all. The learned counsel for the petitioner also brought to the attention of this Court to the order dated 16.3.2000 passed in W.P.NO.16029 of 1996 in respect of another employee,namely T.Paulian, who was working in the very same second respondent-Society and faced similar charges. In that writ petition, this Court passed an order setting aside the order of dismissal and ordered enquiry afresh by a new enquiry officer.

8. The second respondent who passed the order of dismissal is a witness in the enquiry proceedings, against the writ petitioner, and thereafter based on enquiry report the second respondent passed the order of dismissal. Further, the third respondent having defended the second respondent in the civil suit in the proceedings initiated by the petitioner, ought not to have conducted the enquiry proceedings, and the plea of bias will hold good against the third respondent. Therefore, the petitioner plea that rules of natural justice have been violated and grave prejudice has been caused to the writ petitioner has to be accepted and the order of dismissal is liable to be set aside.

9. In this case, the petitioner has been repeatedly requesting the second respondent to change the Enquiry Officer on the ground of bias and personal prejudice. However, this plea was not taken into consideration at all and the enquiry was completed and the order of dismissal was passed.

10. On a perusal of the order of the first respondent, it is clear that the first respondent confirmed the order of the second respondent inspite of the specific objections made by the writ petitioner about the continuance of the third respondent as Enquiry Officer.

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11. In AIR 1958 SC 86 (State of U.P.Vs. Mohd.Nooh), the Apex Court had an occasion to deal with the issue of bias. In that case, when one of the witnesses against the employee turned hostile, the officer holding the enquiry then left the enquiry and gave evidence against the employee and thereafter, resumed to complete the enquiry and passed the order of dismissal. The Apex Court quashed the order of dismissal holding inter-alia that the rules of natural justice were grievously violated. In the same judgment in paragraph 11, it is held as follows:

> "Where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior Court or Tribunal of first instance is so patent and loudly obstrusive that it leaves on its decision an indelible stamp of infirmity or infirmity or vice which cannot be obliterated or cured on appeal or revision. If an inferior Court or Tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior Court's sense of fair play, the superior Court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the Court or Tribunal of first instance, even if an appeal to another inferior Court or Tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what ex facie was a nullity for reasons aforementioned."

In another reported case, the Apex Court in AIR 1988 SC 2232 (Secretary to Govt. Transport Dept. Vs. Munusamy), dealt with the issue of bias and held that the deciding authority must be impartial and without bias. Further, the plea of bias was affirmed in another decision reported in AIR 1993 SC 2155 (R.L.Sharma Vs. Managing Committee, Dr.Hari Ram (C0-edn.) H.S.School.

12. In a case reported in 2005 (6) SCC 321 (CANARA BANK Vs. V.K.AWASTHY), the Supreme Court while dealing with the question of violation of principles of natural justice has referred to the well-known principle that "justice should not only be done, but should manifestly be seen to be done".

13. Therefore, for the reasons aforesaid the proceedings impugned in the writ petitions are set aside and the second respondent-Society is directed to a appoint member of the Bar with 20 years standing as Enquiry Officer or any such competent person as per law. The Enquiry Officer is directed to provide reasonable opportunity to the employer and the writ petitioner to let in evidence in support of their case and the enquiry as directed,

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should be completed as expeditiously as possible preferably within a period of two months on appointment of the Enquiry Officer.

14. The writ petition is disposed of in the above terms. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

sgl

To

1. The Joint Registrar of
Co-operative Societies,
Nagercoil,
Kanyakumari District.

2. The Special Officer
Thalakulam Eraniel Farmers
Service Co-operative Society Ltd.,
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